IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.Rev.Pet.No. 2854 of 2007(Y)

CC.73/1993 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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REVN. PETITIONER: REVISION PETITIONER/INJURED WITNESS:

GEETHA E., AGED 35,
D/O. DAMODARAN NAIR, EANTHUMKUDUMBIL HOUSE,
THENJIPALAM AMSOM, DESOM, NOW RESIDING IN
ERINGAPURAM, GURUVAYOOR.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS: COMPLAINANT/ACCUSED:

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1. STATE OF KERALA (S.I. OF POLICE,
THENJIPALAM - CRIME NO.117/91) REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. EANTHUKUDUMBIL OMASSERI ARAVINDAKSHAN,
S/O. NARAYANAN NAIR, THENJIPALAM AMSOM,MALAPPURAM.

3. EANTHUKUDUMBIL MANGATTAYIL SAVITHRI,
D/O. RAMAN NAIR, THENJIPALAM AMSOM, MALAPPURAM.

BY ADV. SRI.SOJAN MICHEAL
SRI.GILBERT GEORGE CORREYA
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2854 OF 2007

Dated this the 3rd day of August, 2007

O R D E R

Heard the learned counsel for the revision petitioner, the learned counsel appearing for the accused and the learned Public Prosecutor defending the State.

2. The revision petitioner, who is a lady, was the de facto complainant in C.C.No.73/93 on the file of the CJM, Manjeri for offences punishable under sections 323 and 324 read with section 34 IPC. From out of the same occurrence, there was a counter case which was registered as C.C.No.173/93 for the same offences wherein the revision petitioner and three others were the accused. On 2.3.99 the accused in both the C.C. cases were acquitted by the Chief Judicial Magistrate applying the ratio in **Raj Deo Sharma's case**[AIR 1998 SC 3281]. The acquittal in C.C.No.173/93 was challenged before this court in Crl.R.P.No.666/99 filed by the 2nd respondent herein. As per judgment dated 12.7.6, this court taking note of the fact that **Raj Deo Sharma's** case was overruled in **Ramachandra Rao's case** [2002 (2) KLT 189 SC] set aside the acquittal and remitted the case back to the Chief Judicial Magistrate for trial and disposal According to the petitioner, on an enquiry made by her at the office of the Assistant Public Prosecutor,

she was assured of filing an appeal by the State against the acquittal in C.C. No.73/93, but she came to know of the failure on the part of the State to file the appeal only when she appeared before the CJM pursuant to the remit by this court in C.C.No.173/93. It is thereafter that the petitioner preferred the above revision seeking to set aside the order of acquittal in C.C.No.73/93. This revision was filed with a delay of 2916 days. The delay was condoned by this court as per order dated 24.7.07 in Crl.M.A. No.6730/07.

3. Opposing the revision, the learned counsel for the respondents/accused made the following submissions before this court:-

In paragraph 37 of the **Ramachandra Rao's** case, there is a categoric observation to the effect that the judgment in that case by itself shall not confer a right on the court to re-open cases disposed of on the basis of ***Raj Deo Sharma's*** case and which had attained finality. The present revision has been filed after 2916 days and the prayer for setting aside the acquittal should not be granted.

4. I am afraid that I cannot agree with the above submissions. First of all, this court while disposing of Crl. M.A.No.6730/07 had accepted the petitioner's explanation regarding the delay of 2916 days in filing this revision. That was after hearing both sides. Secondly, the observation in paragraph 37 of **Ramachandra Rao's** case only means that the overruling judgment by itself shall not be a ground for re-

opening the cases which had attained finality and which were disposed of on the basis of ***Raj Deo Sharma's*** case which was overruled in **Ramachandra Rao's** case. The acquittal in this case is being set aside not merely by the force of **Ramachandra Rao's** case but on the basis of a revision pointedly assailing the order of acquittal. Secondly, there is no dispute between the parties that this case and C.C.No.173/93 constitute a case and a counter. In ***Sudhir and others Vs. State of M.P.*** [2001 (2) SCC 688], the Apex court had occasion to pronounce upon the need for trial and disposal of a case and a counter by the same court. It is a judge made requirement founded on very salutary principle that the court should have complete conspectus of the entire case forming the subject matter of a case and counter which are nothing but rival versions of the same occurrence. That is why in **Sudhir and others Vs. State of M.P.**, the Apex court observed as follows:-

> " The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus:-
>
> (1) It staves off the danger of an accused being convicted before his whole case is before the court.
>
> (2) It deters conflicting judgments being delivered upon similar facts.
>
> (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions

of one incident."

5. If the trial court were to dispose of C.C.No.173/93 alone without having the advantage of a trial in C.C.No.73/93, then the court will be deprived of the whole case which will definitely work injustice to one party or the other. For that reason also it is necessary that the order of acquittal should be set aside. Accordingly, the judgment dated 12.3.99 in C.C.No.73/93 on the file of the CJM, Manjeri is set aside and the same shall be disposed of along with C.C.No.173/93 treating both the cases as case and counter and applying the principles governing such cases.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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